IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4054 OF 2004

Pramod Shankar Jadhav ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.K.K.Malpathak for Applicant.

Mr.D.S.Mhaisapurkar, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 17, 2004.

P.C.

1. Heard Counsel for the parties.

2. This Application for bail is essentially on the ground that there has been long delay in the conduct of the trial. The Applicant is in custody since August 2001 and the trial has not proceeded. Reliance is placed on the decision of the Apex Court in **2000 Cri.L.J. 2774 in the case of Vivek Kumar vs. State of U.P.**

3. In the first place, the said decision will be of no avail because in the present case, besides, the offence under the ordinary law i.e. Indian Penal Code, the Applicant is charged also with offence under Sections 3 and 4 of the Maharashtra Organised Crimes Act (MOCA). In respect of offence under MOCA, the bar under Section 21(4) of the Act operates, disentitling the Court to release the Applicant on bail, if the conditions provided therein are not fulfilled. Besides, the argument that there has been unexplained delay in the conduct of identification parade, has been considered by the Court below and in my opinion, rightly answered that the complainant was in the company of the robbers for several hours and had ample opportunity to remember the faces of the accused. The delay in the identification parade will, therefore, make no difference. In any case, it will be matter of trial where the version of the complainant can be accepted.

4. It was next contended that insofar as the

so-called recovery of cash, motor cycle, T.V. set and gold ornaments is concerned, that is of no avail because there is nothing on record to suggest that the said items are referable to the offence in question. Even this submission does not commend to me. In view of the materials already on record, it is not possible to take the view that there is reason to believe that the Applicant is not guilty of the alleged offence and if it is so, the bail application will have to be rejected.

5. Insofar as delay in the conduct of the trial is concerned, it is brought to my notice by the learned A.P.P. that the hearing of the trial has been fixed on 31st December 2004 for framing of the charge, as all the accused are not available for trial. The Trial Court shall proceed with the trial on day-to-day basis and finally dispose of the same preferably within six months from receipt of writ of this Court.

6. Application rejected with the above observations.

7. Needless to observe that the trial will be decided on its own merits, uninfluenced by the observations in the order while considering the bail application.

A.M.KHANWILKAR, J.